Bridgestone/Firestone, Inc. *and* Local 283, International Brotherhood of Teamsters, AFL–CIO. Case 7–CA–39847

May 22, 2000

DECISION AND ORDER

BY MEMBERS FOX, HURTGEN, AND BRAME

On a charge filed May 21, 1997, by Local 283, International Brotherhood of Teamsters, AFL–CIO (the Union), the General Counsel of the National Labor Relations Board issued a complaint on July 24, 1997, against Bridgestone/Firestone, Inc. (the Respondent), alleging that the Respondent violated Section 8(a)(5) and (1) by refusing to bargain with, and withdrawing recognition from, the Union as the exclusive representative of a unit of its employees. The Respondent filed a timely answer to the complaint denying the commission of any unfair labor practices. On November 6, 1997, the Respondent, the Union, and the General Counsel filed with the Board a stipulation of evidence and joint motion to transfer this proceeding to the Board. The parties agreed that the stipulation, with attached exhibits, including the charge, complaint, and answer, constitutes the entire record in this case, and that no oral testimony is necessary or desired by any of the parties. The parties further waived a hearing before an administrative law judge, the making of findings of fact and conclusions of law by an administrative law judge, the issuance of an administrative law judge's decision and recommended Order, and indicated their desire to submit the case directly to the Board for findings of fact, conclusions of law, and the issuance of a Decision and Order. On January 20, 1998, the Board approved the stipulation of evidence, granted the motion, and transferred this proceeding to the Board. The General Counsel filed a brief, and the Respondent filed briefs in opposition and in reply to the complaint.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record and the briefs, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent corporation operates stores in the Detroit, Michigan, area from which it sells tires, automotive supplies, and services. During the 12-month period preceding the filing of the unfair labor practice charge, the Respondent had gross revenues in excess of $500,000 and purchased goods valued in excess of $50,000 from points outside the State of Michigan for shipment directly to its metropolitan Detroit stores. The parties stipulated and we find that, at all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Stipulated Facts

At all relevant times, at least through June 5, 1997, the Union has been recognized as the exclusive representative of the following unit of the Employer's employees:

> All full-time and regular part-time general service employees, maintenance bay service employees, technicians (A–C and 1–5), mechanics, tire service employees and installers employed by Respondent at the following facilities: 11919 East Warren Avenue, Detroit, Michigan; 1801 Michigan Avenue at 11th, Detroit, Michigan; 14170 Greenfield Road, Detroit, Michigan; 29200 Plymouth Road, Livonia, Michigan; 32525 Gratiot Avenue, Roseville, Michigan; 29034 Van Dyke, Warren, Michigan; 19821 Plymouth Road, Detroit, Michigan; and 2704 Biddle, Wyandotte, Michigan (herein referred to collectively as the metropolitan Detroit stores); but excluding office clerical employees, guards, and supervisors as defined in the Act.

This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from June 6, 1994, through June 5, 1997, except as provided by the following terms of that Agreement:

> *ARTICLE XXI-TERMINATION OF AGREEMENT*
>
> Section 1.
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> This Agreement shall be in full force and effect from June 6, 1994, to and including June 5, 1997, and shall continue in full force and effect from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to date of expiration.
>
> Section 2.
>
> It is further provided that where no such cancellation or termination notice is served and the parties desire to continue said Agreement, but also desire to negotiate changes or revisions in this Agreement, either party may serve upon the other a notice, at least sixty (60) days prior to June 5, 1997, or June 5 of any subsequent contract year, advising that such party desires to continue this Agreement, but also desires to revise or change terms or conditions of such Agreement. The respective parties shall be permitted all lawful economic recourse to support their request for revisions if the parties fail to agree thereon.

On March 20, 1997,[2] the Union wrote the Respondent, advising it that:

[1] The Respondent also requested oral argument. This request is denied as the stipulation with exhibits and briefs adequately present the issues and positions of the parties.

[2] All subsequent dates are in 1997.

> Local Union No. 283 . . . desires to continue its existing Agreement, but also desires to negotiate changes or revisions in such Agreement and the Schedule "A" attached thereto.[3] The particular provisions concerning which we desire to negotiate are "**WAGE, HOURS, WORKING CONDITIONS AND FRINGE BENEFITS.**" [Emphasis in original.]

On March 26 the Respondent acknowledged the Union's request "to negotiate a new union contract" and stated that its Michigan district manager had been asked to set up an initial bargaining session.

On April 1 the Union requested information from the Respondent regarding existing insurance programs. On April 7 the Respondent supplied the requested information.

Between April 19 and 29, the Respondent received petitions signed by 29[4] of the 45 bargaining unit employees indicating that they no longer desired union representation.[5] On April 29 the Respondent wrote the Union that it had received petitions signed by a majority of unit employees stating that they no longer wished to be represented by the Union. The Respondent further wrote that it would honor the extant contract until its June 5 expiration but, based on objective considerations showing an absence of majority support, it was legally prohibited from negotiating a successor agreement. On April 30, the Union responded, requesting proof from the Respondent that a majority of employees no longer supported it. The Union also stated that because the Respondent had not petitioned the Board for an election it was obligated to bargain with the Union.

On June 5 the Respondent wrote the Union stating that, pursuant to the employee petitions and other objective considerations showing an absence of union majority support, it was withdrawing recognition from the Union effective June 6.

Since June 6 the Respondent has refused to recognize and bargain with the Union as the exclusive representative of its unit employees.

B. Contentions of the Parties

The General Counsel argues that the Respondent's refusal to bargain and its subsequent withdrawal of recognition violated Section 8(a)(5) and (1). The General Counsel asserts that the 1994–1997 Agreement clearly provides that it will "roll over" unless a party serves timely written notice of termination. The General Counsel contends that neither party provided that termination notice and, conversely, that the Union specifically advised the Respondent that it wished to *continue* the Agreement, with some modifications. The General Counsel argues that the effect of the Union's notice was to automatically renew the Agreement, and to prevent the Respondent—under the contract-bar principle[6]—from raising a subsequent claim of good-faith doubt. See *Auciello Iron Works, Inc*., 317 NLRB 364, 367 (1995), enfd. 60 F.3d 25 (1st Cir. 1995), affd. 517 U.S. 781 (1996).

The Respondent argues that neither its refusal to bargain nor its withdrawal of recognition violated the Act. It contends that, under established Board law, because it had received a petition from a majority of unit employees asserting that they no longer desired union representation, it could lawfully discontinue negotiations for a successor agreement and withdraw recognition on contract expiration. See, e.g., *Burger Pits, Inc*., 273 NLRB 1001 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 19 v. NLRB*, 785 F.2d 796 (9th Cir. 1986).

The Respondent further asserts that its refusal to bargain and withdrawal of recognition were not unlawful under contract-bar principles. The Respondent argues that the Union's March 20 "reopener" request, which broadly sought negotiation of all mandatory subjects of bargaining,[7] was tantamount to, and had the effect of, terminating that Agreement at its expiration. The Respondent asserts that because every provision of the 1994–1997 contract arguably relates in some way to "wage [sic], hours, working conditions and fringe benefits," the effect of the Union's March 20 letter was to terminate that Agreement.

In support of this argument, the Respondent relies on *South Texas Chapter, AGC*, 190 NLRB 383 (1971). In *South Texas*, the Board upheld a judge's finding that a union's contract reopener letter seeking to negotiate "all matters pertaining to wages, hours, and all conditions of employment," effectively terminated, rather than sought to modify, the collective-bargaining agreement. In *South Texas*, the judge stated that:

> [A] call for negotiation on all terms is, to my mind, more in the nature of a notice to negotiate an entire new contract (and hence a "notice of desire to terminate") than it is a notice to negotiate mere "modifications" or even "changes." [Id. at 386.]

The Respondent contends that, here, too, the Union effectively terminated the 1994–1997 contract by its expansive bargaining request.

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[3] Schedule A includes provisions covering: hours of work, overtime and premium pay, holidays, vacations, uniforms, jury duty, funeral and sick leave, insurance and pension benefits, classification and wage rates, and tool insurance.

[4] Although the parties stipulated that 34 of 45 unit employees signed petitions, it appears that they inadvertently counted five signatures on Exhs. 7(a) and (b) twice. However, the 29 employees who signed the petitions constitute a majority of the bargaining unit employees.

[5] Although the legends on the petitions varied, the parties stipulated that the petitions indicated that "the signatory employees no longer wanted to be represented by the . . . Union."

[6] As argued by the General Counsel, where a contract is in effect, there is an irrebuttable presumption that the union represents a majority of unit employees. The issue of an employer's good-faith doubt that the union has majority status will not be considered during this period. See, e.g., *North Bros. Ford,* 220 NLRB 1021, 1022 (1975).

[7] The Respondent argues that because "wages, hours, and working conditions" have become synonymous with all mandatory subjects of bargaining, the Union was seeking to bargain over all mandatory terms. See, generally, *AT&T Corp*., 325 NLRB 150 (1997).

Alternatively, the Respondent relies on *Century Wine & Spirits,* 304 NLRB 338 (1991).[8] In *Century Wine*, the Board analyzed almost identical contract provisions, id. at 339,[9] and found that the contract did not automatically renew as to those provisions, which were reopened for bargaining. In *Century Wine*, the Board found that although the contract renewed as to those provisions for which bargaining was not sought, reopened provisions were subject to modification through the normal collective-bargaining process. Applying *Century Wine* the Respondent argues that even assuming that the 1994–1997 contract renewed as to those issues for which the Union had not sought bargaining, the agreement did not renew as to "wage [sic], hours, or working conditions." Further, since the "renewed" agreement would not "contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship,"[10] the Respondent argues that it would not constitute a contract bar.

Finally, the Respondent asserts that *KCW Furniture Co.*, 247 NLRB 541, 543 (1980), enfd. 634 F.2d 436 (9th Cir. 1980), is inapplicable. In *KCW*, the Board held that the union's notice of intent to modify the contract did not prevent automatic renewal of the entire contract. However, the Respondent argues, the Board's conclusion in *KCW* was based on the unique language of that agreement which provided that:

> "Notice of Opening" is in nowise intended by the parties as a termination of nor shall it in anywise be construed as a termination of this Agreement or any annual contract effectuated through automatic renewal nor as forestalling automatic renewal as herein provided.

The Respondent notes that the 1994–1997 agreement contains no comparable language. In the absence of specific language, the Respondent argues that, at most, there is renewal of only those provisions that are not specifically reopened.

C. Analysis and Conclusions

For the following reasons, we find merit in the Respondent's arguments and conclude that it did not violate the Act.

As an initial point, we agree with the parties that had the 1994–1997 collective-bargaining agreement automatically renewed in its entirety prior to the Respondent's April 29 notice to the Union of its good-faith doubt of union majority support, the Respondent's claim would have been foreclosed under the contract-bar principle for the duration of the contract extension. See, e.g., *Colson Equipment, Inc.,* 257 NLRB 78 (1981), enfd. in relevant part 673 F.2d 221 (8th Cir. 1982). We therefore must determine whether that agreement had renewed prior to the Respondents' withdrawal of recognition and refusal to bargain. In determining whether renewal occurred, we find relevant both the applicable contract provisions as well as the March 1997 conduct of the parties concerning proposed changes to the 1994–1997 Agreement.

On the issue of contract language, the parties agree that the applicable provisions are article XXI, sections 1 and 2, of the 1994–1997 agreement. As previously set forth, section 1 specifies that the agreement will remain in effect (i.e., "roll over") in the absence of a timely "written notice of desire to cancel or terminate the Agreement." Section 2 details the procedures to be followed where a party does not wish to terminate the Agreement but "desires to negotiate changes or revisions." Clearly, it was section 2 that the Union invoked when writing the Respondent on March 20, requesting bargaining. Contrary to the General Counsel, however, we do not find that this language ends our inquiry.

Early Board cases held that notices to negotiate changes to a contract, timely received by the other party prior to the automatic renewal date of the agreement, generally prevented that agreement's renewal for contract bar purposes. The rationale for this approach was set forth in *Deluxe Metal Furniture Co.,* 121 NLRB 995, 1002, 1003(1958), a representation case:

> [Treating] all notices given at approximately the renewal period as notices to forestall automatic renewal, *unless very strict provisions are met*, will practically eliminate the very difficult area of contract bar rules covering coterminous modification and termination clauses and will render unnecessary evaluation of the contract clause, the type of notice given, and the conduct of the parties with respect thereto, which are frequently inconsistent and create difficulties in determining their effect upon contract bar. [Emphasis added.]

Thus, it was the Board's view that, absent strict provisions, a notice to negotiate changes to the contract was the equivalent of a notice of termination for contract-bar purposes.

In the context of 8(a)(5) refusal-to-bargain cases, which factually parallel those raising the contract-bar

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[8] *Century Wine* was subsequently vacated by the Board as a result of the parties' settlement of relevant unfair labor practice allegations. *Century Wine & Spirits,* 317 NLRB 1139 (1995).

[9] The *Century Wine & Spirits* contract provisions specified, in relevant part, that:

> Section 1.
>
> The Agreement shall be in full force and effect from April 1, 1985, to and including March 31, 1988, and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to the date of expiration.
>
> Section 2.
>
> When no such cancellation or termination is served and the parties desire to continue said Agreement but also desire to negotiate changes or revisions in the Agreement, either party may serve upon the other a notice at least sixty (60) days prior to March 31, 1988 or March 31st of any subsequent contract year, advising that such party desires to revise or change terms of such agreement.

[10] *Appalachian Shale Products,* 121 NLRB 1160, 1163 (1958).

issue,[11] early Board cases similarly held that a party's request to negotiate changes to a contract prior to the date for automatic renewal, constituted a notice of termination, at least when that was consistent with the parties' previous bargaining. See, e.g., *Oakland Press Co.,* 229 NLRB 476 (1977), enfd. in relevant part 606 F.2d 689 (6th Cir. 1979). Further, where the changes sought to be negotiated were "substantial," the Board and courts held that this was the "equivalent to a notice to terminate" the entire agreement. See, e.g., *Lion Oil Co.,* 109 NLRB 680, 683 fn. 6 (1954), revd. 221 F.2d 231 (8th Cir. 1955), revd. and remanded 352 U.S. 282 (1957), modified 245 F.2d 376 (8th Cir. 1957); and *American Woolen Co.,* 57 NLRB 647, 649 (1944).

In addition to considering the contract language invoked, the Board, in the context of 8(a)(5) cases, has also evaluated the substance of the proposals that the parties sought to renegotiate. Thus, in *South Texas Chapter, AGC,* supra, a refusal to bargain case, the union invoked the "change" and "modification" provision from the contract, rather than one providing for "termination." Nonetheless, the Board adopted the judge's finding that the contract had not automatically renewed because, by proposing negotiations over "all matters pertaining to wages, hours, and all conditions of employment," the union effectively had sought contract termination. In reaching this result, the judge also relied on the fact that the union had failed to include any specific proposals in its bargaining request.

In more recent 8(a)(5) cases, the Board has held, for purposes of determining whether parties may utilize economic weapons during reopener negotiations (e.g., strikes, implementation of proposals at impasse), that the effect of reopening certain contract provisions is to terminate the contract, at least as to the reopened provisions. *Speedrack, Inc.,* 293 NLRB 1054, 1055–1056 (1989); *Hydrologics, Inc.,* 293 NLRB 1060, 1062 (1989); and *Teamsters Local 507 (Klein News),* 306 NLRB 118, 135–136 (1992). As explained in *Hydrologics*:

> [W]e believe that underlying the Court's reasoning in *Lion Oil* [352 U.S. at 290] is, necessarily, a conclusion by the Court that the Act and its legislative history may be read as placing reopener bargaining and bargaining when no contract is in effect on equal footing with respect to the availability of economic weapons.

293 NLRB at 1061. Accord: *Electrical Workers IBEW Local 47 v. NLRB,* 927 F.2d 635, 643–44 (D.C. Cir. 1991).

The Board has recognized one narrow exception to the principle that contracts do not automatically renew, at least as to provisions over which bargaining has been sought. In *KCW Furniture Co.,* supra, the Board held that where there is express contract language providing that a "[n]otice of reopening' [was] nowise intended by the parties as a termination of nor shall it be anywise construed as a termination of this Agreement," this specific contract language prevailed and the entire contract automatically renewed, regardless of the breadth of the issues sought to be negotiated. See also *Robert A. Barnes, Inc.,* 268 NLRB 343 (1983). However, the holdings in *KCW* and *Robert Barnes* have not been extended beyond their reopener language. See, e.g., *Hydrologics, Inc.;* supra; *Speedrack*, supra, 293 NLRB at 1057 fn. 12. Indeed, as stated in *Teamsters Local 507 (Klein News*), supra, 306 NLRB at 136:

> In *KCW Furniture,* supra, e.g., the parties explicitly agreed that the reopener provided there could *not* be construed as a termination, or as forestalling an automatic renewal of the agreement. In contrast, here there is no such explicit declaration. [Emphasis in original.]

Applying the foregoing precedent to the instant case, we find that the entire 1994–1997 contract did not automatically renew as a result of the Union's March 20 notice to the Respondent. Thus, applying the foregoing contract-bar and 8(a)(5) precedent to the facts of this case, we find that the Union's request to negotiate changes in the 1994–1997 contract had the effect of terminating the agreement, at least as to those provisions for which bargaining was sought. Although parties may contractually specifically provide otherwise, i.e., that the reopened contract automatically renews, they must do so expressly. Here, unlike the explicit provisions in *KCW* and *Robert Barnes*, article XXI does not expressly provide that the contract [or portions thereof] will not terminate if reopened. In the absence of such an express contractual provision, we find that the effect of the Union's invocation of the contractual "changes or revisions" procedure in article XXI was to forestall automatic renewal of those contract provisions for which bargaining was sought. And, because the issues on which the Union sought bargaining ("wage [sic], hours, and conditions") were tantamount to all mandatory subjects of bargaining, we find that, even assuming that the 1994–1997 agreement renewed as to its unopened contract provisions, the residual agreement would have been insufficient under *Appalachian Shale* principles to constitute a contract bar.

We note that this result is consistent *with South Texas Chapter, AGC*, supra, on the basis that the breadth of the Union's bargaining request was tantamount to a notice of termination. And, although *Century Wine & Spirits* was vacated, and thus lacks precedential value, we find that our decision comports with the reasoning in that case that the effect of invoking virtually identical "changes or revisions" [versus "termination" provisions] was to terminate those provisions on which the Union sought bargaining prior to the contract's expiration.[12]

[11] In the 8(a)(5) context, the legal issue is whether the contract has renewed so that additional bargaining is not required. In the representation context, the legal inquiry is whether the contract has automatically renewed so that a question concerning representation cannot be raised.

[12] We do not find our dissenting colleague's contrary arguments persuasive. Her position is based on a dissenting opinion that has never been adopted by the Board, and relies on cases (*KGW and Robert Barnes*),

We agree with our dissenting colleague that, under the 1994 contract, a party could seek to terminate all or part of a contract. In the instant case, assuming arguendo that the Union sought to terminate only part of the contract, that part was a broad and substantial one. It covered "wage(s), hours, working conditions and fringe benefits." Indeed, it is difficult to say what, if anything, was not open for negotiation. As discussed above, contract-bar principles teach that where, as here, substantial terms and conditions of employment are open for negotiation, a contract bar does not exist. Thus, it is clear that a contract bar does not exist here.

We do not agree with our colleague's somewhat intemperate statement that our analysis has "nonsensical" consequences. We believe that the Union reopened the 1994 contract in a substantial way, and that, under contract bar principles, the contract was therefore no longer a bar. The "consequence" of this is that the employees are free to exercise their Section 7 right to reject the Union as representative. Whatever the reasonable differences that exist between ourselves and our dissenting colleague, it surely cannot be said that this consequence is "non-sensical."

Having determined that the 1994–1997 contract did not automatically renew on March 20, we further find that the Respondent thereafter lawfully refused to bargain for a successor contract and withdrew recognition from the Union at the contract's expiration. The parties stipulated that, by April 29 the Respondent had received petitions from a majority of unit employees indicating that they no longer wanted to be represented by the Union. There is neither evidence nor claim that the petitions were invalid or tainted by Respondent's conduct. Accordingly, we find that the petitions created a well-supported good-faith doubt—which the Respondent promptly raised to the Union—that the Union retained majority support.[13]

Based on its good-faith doubt, we find, as in *Burger Pits, Inc*., supra, that the Respondent was privileged to inform the Union on April 29 that it would not bargain for a successor agreement. As the Board stated in *Burger Pits*, id. at 1001*:*

> It is also established that within a reasonable time prior to the expiration date of a collective-bargaining agreement, an employer who establishes a good-faith doubt of a union's majority status may announce that it does not intend to negotiate a new agreement.

See also *Auciello Iron Works*, supra, 317 NLRB at 368.

We similarly conclude that, based on this good-faith doubt, the Respondent was privileged to withdraw recognition from the Union after the contract expired. Thus, after contract expiration, there is a rebuttable presumption that an incumbent union represents a majority of unit employees. See, e.g., *Master Slack Corp.*, 271 NLRB 78, 84 (1984). That presumption can be rebutted, where, as here, an employer raises a good-faith doubt of the union's continued majority support. *Burger Pits, Inc*., supra.

Accordingly, we shall dismiss the complaint in its entirety.

CONCLUSIONS OF LAW

1. The Respondent, Bridgestone/Firestone, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 283, International Brotherhood of Teamsters, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has not violated the Act as alleged in the complaint.

ORDER

The complaint is dismissed.

MEMBER FOX, dissenting.

Contrary to the majority, I would find that the Respondent's refusal to bargain with the Union for a successor to the 1994–1997 collective-bargaining agreement and its subsequent withdrawal of recognition from the Union at that agreement's expiration violated Section 8(a)(5) and (1) of the Act. Unlike my colleagues, I would find that the entire 1994–1997 collective-bargaining agreement automatically renewed on the agreement's expiration because neither party sent a notice of termination pursuant to section 1 of article XXI of the agreement. As explained below, I do not regard the Union's notice of a desire to negotiate changes or revisions, sent pursuant to section 2 of article XXI, as the equivalent of a termination notice. Rather, by the express terms of section 2, the Union's notice permitted the parties to resort to all lawful economic recourse during negotiations, but also indicated the Union's intent to continue the agreement in effect unless and until modifications were agreed on. In the absence of either agreement by the parties on modifications or the sending of a section 1 termination notice on or before April 6, 1997, the agreement was in effect before the contract expiration date by virtue of the terms of section 2, and in effect after that date by virtue of the automatic renewal provision of section 1. Accordingly, under the contract bar doctrine, the Union enjoyed an irrebuttable presumption of majority status on April 29, when the Respondent advised the Union of its good-faith doubt of the Union's majority support, and on June 6, when it actually withdrew recognition. See *Auciello Iron Works, Inc.*, 317 NLRB 364, 367 (1995), enfd. 60 F.3d 25 (1st Cir. 1995), affd. 517 U.S. 781(1996).

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which the Board subsequently limited to their precise facts. See, e.g., *Century Wine & Spirits,* supra*; Teamsters Local 507 (Klein News),* supra

[13] As stated in *Auciello Iron Works*, 317 NLRB 364, 368 (1995), "the existence of a good-faith doubt is a question of fact. The employer has the burden of proving that it had a reasonable, good-faith belief that the union no longer represented a majority of the bargaining unit employees." Further, that good-faith doubt must be based on objective considerations. *Laidlaw Waste Systems*, 307 NLRB 1211 (1992). We find that the Respondent has met this burden, and no party contends otherwise.

The basic principles underlying my analysis of this case are set forth in the line of decisions, discussed at some length by the majority, in which the Board has considered the effect of a notice of intent to negotiate modifications to an agreement on termination or renewal of the agreement's terms. As the majority states, these cases can be read together to hold that, in the absence of evidence of a contrary intent by the parties, a timely request to negotiate changes to a contract, received by the other party prior to the automatic renewal date of the agreement, will be found to have prevented the contract from automatically renewing, at least as to provisions which the party is seeking to change. See *South Texas Chapter, AGC,* 190 NLRB 383 (1971); *Speedrack, Inc.,* 293 NLRB 1054, 1054–1056 (1989); *Hydrologics, Inc.,* 293 NLRB 1060, 1062 (1989); and *Teamsters Local 507 (Klein News),* 306 NLRB 118, 135–136 (1992). It is important to note, however, as the Board has acknowledged, that this is "only a principle of contract interpretation" and that the parties can preclude such a result by agreeing to "clear contract language manifesting a contrary intent." *Century Wine & Spirits*, 304 NLRB 338, 342 (1991), vacated on other grounds 317 NLRB 1139 (1995). Accord: *Electrical Workers IBEW Local 47 v. NLRB*, 927 F.2d 635, 643–644 (D.C. Cir. 1991), affg. *Speedrack,* supra. Thus, the question before us is simply whether the parties' contract, and their conduct pursuant to the contract, manifest such a contrary intent. It seems plain to me that they do.

The provisions relating to termination of the agreement are set forth in article XXI. Section 1 of the article states that the agreement shall be in effect from June 6, 1994, to and including June 5, 1997, "and shall continue in full force and effect from year to year thereafter unless *written notice of desire to cancel or terminate the Agreement* is served by either party upon the other at least sixty (60) days prior to date of expiration." Section 2 of the article states:

> Where no such cancellation or termination notice is served *and the parties desire to continue said Agreement, but also desire to negotiate changes or revisions in this Agreement,* either party may serve upon the other a notice, at least sixty (60) days prior to June 5, 1997, or June 5 of any subsequent contract year, advising that such party desires to continue this Agreement, but also desires to revise or change terms of conditions of such Agreement. The respective parties shall be permitted all lawful economic recourse to support their request for revisions if the parties fail to agree thereon. [Emphasis added.]

It is undisputed that no notice of desire to cancel or terminate the agreement was provided by either party pursuant to section 1, and that the only notice provided by either party was provided by the Union, pursuant to section 2. It is also undisputed that in its section 2 notice, provided by letter dated March 20, 1997, not only did the Union *not* state that it desired to cancel or terminate the agreement, it in fact stated precisely the opposite, i.e., that it desired to *continue* the agreement. By nevertheless interpreting the section 2 notice as the equivalent of a section 1 notice of termination, my colleagues not only ignore the Union's clear intent as expressed in the May 20, 1977, but also refuse to give effect to procedures that were freely negotiated by the parties and incorporated in their agreement in clear, express terms.

Contrary to the majority, I find that the contractual language at issue in this case serves the same contractual purpose as the language in *KCW Furniture Co.,* 247 NLRB 541 (1980), enfd. 634 F.2 436 (9th Cir. 1980); and *Robert A. Barnes, Inc.,* 268 NLRB 343 (1984). And for the reasons stated by Member Cracraft in her well-reasoned dissent in *Century Wine & Spirits*, supra, I reject the majority's efforts to distinguish those cases because of the nonsensical consequences of their analysis.

Section 1 of the instant agreement clearly prescribes the exclusive method for terminating the agreement; and the language in section 2 does not state, or for that matter reasonably imply, that a notice of desire to negotiate changes or modifications would operate to forestall automatic renewal of the agreement, or any of its provisions, past the agreement's expiration date. Thus, while the instant agreement lacks language exactly matching that found in *KCW*—that a "Notice of Opening" (comparable to sec. 2 in the instant case) is not intended by the parties as a termination of the agreement—the unmistakable import of sections 1 and 2, when read together, is that only a section 1 notice can terminate the agreement and that a section 2 notice cannot. Nothing in the language or history of the two provisions indicates that a section 2 notice of intent to "continue" the agreement is to be treated as the equivalent of a section 1 notice of intent to terminate.

As Member Cracraft pointed out with respect to similar language at issue in *Century Wines,* the majority's interpretation of section 2 would make the inclusion of section 1 pointless. Under normal principles of contract law, where an agreement contains a provision requiring notice by a certain date of a party's desire to terminate the agreement, failure to give such notice will cause the agreement to be automatically renewed. Yet under my colleagues' interpretation a party would no longer be able to rely on the absence of a section 1 notice from the other party as meaning that the agreement had renewed.

As neither party gave notice to terminate the agreement under section 1, and as the Union's section 2 notice did not terminate the agreement, or any provision of the agreement, I would find that the agreement remained in effect, and as a result the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union and unlawfully withdrawing recognition.